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S.R.

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/621,599 07/21/00 BUCHMAN

J 08488

EXAMINER

PASCUA, J

ART UNIT	PAPER NUMBER
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3727

DATE MAILED:

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#3

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DM32/0208

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/621,599

Applicant(s)

Buchman

Examiner

Jes F. Pascua

Group Art Unit

3727



☒ Responsive to communication(s) filed on Jul 21, 2000

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1035 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claim

☒ Claim(s) 1-17 is/are pending in the applicat

Of the above, claim(s) none is/are withdrawn from consideration

☒ Claim(s) none is/are allowed.

☒ Claim(s) 1-17 is/are rejected.

☐ Claim(s) is/are objected to.

☐ Claims are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☒ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

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DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
2. Claims 8-10 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 8, the location of the “area of weakness has not been positively defined.

In claim 17, the specific method step performed by the terms “providing” or “forming” have not been defined, thus rendering the scope of the claim indeterminable. For the purposes of examination, the claim will be treated as a product-by-process.

Claims not specifically mentioned are rejected since they depend from claims rejected under 35 U.S.C. § 112, second paragraph.

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Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-17 are provisionally rejected under the judicially created doctrine of double patenting over claims 1-19 of copending Application No. 09/621,598. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows: a flexible, reclosable package comprising first and second panels section, a zipper closure, a slider device mounted on the zipper closure and a tamper-evident structure encasing a portion of the zipper closure with the tamper-evident structure having a first opening at a first side edge exposing a portion of the zipper with the slider device positioned within the first opening.

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Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

5. Claims 1-17 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-21 of copending Application No. 09/621,597. Although the conflicting claims are not identical, they are not patentably distinct from each other because both disclose a flexible, reclosable package comprising first and second panels section, a zipper closure, a slider device mounted on the zipper closure and a tamper-evident structure encasing a portion of the zipper closure with the tamper-evident structure having a first opening at a first side edge exposing a portion of the zipper with the slider device positioned within the first opening. However, Application No. 09/621,597 shows a second opening at an opposing, second side edge. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form Application No. 09/621,597 with only a first opening at the first edge, since it has been held that omission of an element and its function in a combination where the remaining elements perform the same functions as before involves only routine skill in the art. *In re Karlson*, 136 USPQ 184.

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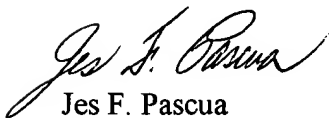
This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

7. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jes F. Pascua whose telephone number is (703) 308-1153.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Errica Bembry at (703) 306-4005.



Jes F. Pascua
Primary Examiner
Art Unit 3727
February 7, 2001